



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 211026-0217]

RIN 0648-BK94

Fisheries Off West Coast States; Emergency Action to Temporarily Extend the Sablefish Primary Fishery Season

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; emergency action; request for comments.

SUMMARY: This emergency rule temporarily extends the 2021 sablefish primary fishery for vessels using bottom longline gear from October 31, 2021, to December 31, 2021. This action is necessary to provide operational flexibility so that vessels in the sablefish primary fishery are able to fully harvest their tier limits despite high economic uncertainty in 2021. This action would also extend the incidental halibut retention allowance provision for the primary fishery north of Point Chehalis, Washington from October 31, 2021, to December 7, 2021.

DATES: Effective [*Insert date of publication in the FEDERAL REGISTER*], until December 31, 2021. Comments must be received by [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2021-0095 by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

Go to <https://www.regulations.gov> and enter NOAA-NMFS-2021-0095 in the Search box, click the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic Access

This emergency rule and supporting documents, including a Supplemental Information Report prepared for this action, are accessible via the Internet at the Office of the **Federal Register** web site at <https://www.federalregister.gov>. Background information and documents are also available at the NMFS West Coast Region website at: <https://www.fisheries.noaa.gov/species/west-coast-groundfish> and at the Pacific Fishery Management Council's website at https://www.pcouncil.org/managed_fishery/groundfish/.

FOR FURTHER INFORMATION CONTACT: Abbie Moyer, phone: 206-305-9601, or e-mail: Abbie.moyer@noaa.gov.

SUPPLEMENTARY INFORMATION: The primary sablefish fishery tier program is a limited access privilege program set up under Amendment 14 to the Pacific Coast Groundfish Fishery Management Plan (PCGFMP); which was approved by the Pacific Fishery Management Council (Council) in 2000 and was implemented by NMFS in

2001(66 FR 41152, August 7, 2001). Participants hold limited entry permits with a pot gear and/or longline gear endorsement and a sablefish endorsement.

Under Amendment 14, as set out in 50 CFR 660.231, the permit holder of a sablefish-endorsed permit receives a tier limit, which is an annual share of the sablefish catch allocation to this sector. NMFS sets three different tier limits through the biennial harvest specifications and management measures process (for the 2021 limits, see 85 FR 79880, December, 11 2020); and up to three permits may be stacked at one time on a vessel participating in the fishery. Stacked tier limits are combined to provide a cumulative catch limit for that vessel. After vessels have caught their full tier limits, they are allowed to move into other fisheries for sablefish, specifically the daily trip limit (DTL) fishery or the open access fishery, or fisheries for other species.

Under Amendment 14, the sablefish primary season has historically been open from April 1 through October 31 of each year, though individual permit holders may only fish up to their tier limits so may be required to cease fishing prior to October 31. These season dates were put into regulation during the development and implementation of the fishery under Amendment 14. Prior to the implementation of Amendment 14, the sablefish fishery had operated as a ‘derby’ style fishery, with a season length lasting a few weeks to a few days. Under Amendment 14, the fishery began operating under a seven-month season. The seven-month season structure, as opposed to a year-long season, was intended to allow for timely catch accounting so that the sector allocation was not exceeded.

Vessels in the primary fishery north of Point Chehalis, Washington are also allowed to retain incidentally caught Pacific halibut up to a specific limit specified at 50 CFR 660.231(b)(3)(iv). Halibut are encountered regularly in the normal operation of the sablefish primary fishery due to the co-occurrence of halibut and sablefish in the same environments, and the design and function of fixed gear. This retention is allowed until

the sablefish primary season ends and it contributes additional economic value to this sector.

At the September 2021 Council meeting, the Council's Groundfish Management Team (GMT) provided analysis of the 2021 sablefish primary fishery participation and performance compared to prior years of the fishery. The GMT demonstrated in their analysis that from 2011 to 2019, annual attainment averaged over 90 percent of total sablefish tier allocations, with 65 percent harvested between April and mid-September. By contrast, the GMT showed the fishery in 2021 has only attained 42 percent of its allocation as of mid-September. This underattainment is attributed to unforeseen delays related to the ongoing COVID-19 pandemic that have resulted in management problems for the harvesting fleet, processors and sales managers to catch, process and market sablefish in a timely manner within the current sablefish primary fishery season of April 1, 2021 to October 31, 2021.

In 2020, NMFS issued an emergency rule (85 FR 68001, October 27, 2020) to temporarily extend the 2020 sablefish primary fishery from October 31, 2020 to December 31, 2020 in response to industry requests and the Council recommendation. Between the season start date on April 1 and mid-September, the 2020 sablefish primary fishery participants also experienced unusually high underattainment attributed to unforeseen delays related to the COVID-19 pandemic. The delays were caused by local travel restrictions, postponed season start dates, and quarantine requirements.

The 2020 emergency action (85 FR 68001, October 27, 2020) extending the sablefish primary fishery season resulted in an additional 249.9 metric tons in landings and \$857,833 in revenue for fishery participants. When the Council recommended emergency action in 2020, it was unforeseen how long the COVID-19 pandemic would last, how COVID-19 disease variants would emerge, or when vaccines would be available. There is a continued disruption because of COVID-19 to the sablefish primary

fishery, which has prevented processors from keeping a full contingent of process workers, prevented shoreside processors from opening, and prevented vessels from sailing with full crews in 2021. Because of this risk and uncertainty, members of industry and the Council Groundfish Advisory Subpanel (GAP) and GMT advisory bodies recommended the Council take emergency action to extend the sablefish primary fishery season in 2021 to reduce economic hardships. The GMT estimated that if the sablefish primary fishery season closed on October 31, 2021, the fishery would only attain 64 percent of its allocation, which equates to about \$2.76 million in lost ex-vessel revenue and additional economic benefits for coastal communities.

The Council reviewed the information provided by the GMT and by fishery stakeholders and discussed options to provide relief to commercial fishermen in this sector from economic losses as a result of the recent unforeseen events associated with the ongoing COVID-19 pandemic that began in approximately March 2020. These unforeseen events have adversely affected commercial fishermen throughout the Council's jurisdiction for an extended period of time. These events have also caused serious management problems by making it more difficult to achieve optimum yield (OY) for sablefish.

The Council recommended that NMFS implement an emergency action to extend the sablefish primary fishery season from October 31, 2021, to December 31, 2021, to allow participants more time to harvest their full tier limits. As part of the emergency action, the Council also recommended an extension of the incidental halibut retention allowance north of Point Chehalis, Washington, to December 7, 2021. The retention allowance ensures additional economic benefits and reduces regulatory discards of commercially valuable incidental halibut.

Criteria and Justification for Emergency Action

Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Secretary of Commerce to implement emergency regulations to address fishery emergencies. NMFS' Policy Guidelines for the Use of Emergency Rules (62 FR 44421; August 21, 1997) list three criteria for determining whether an emergency exists. Specifically, NMFS' policy guidelines require that an emergency: (1) Result from recent, unforeseen events or recently discovered circumstances; (2) present serious conservation or management problems in the fishery; and (3) can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

NMFS has evaluated all relief mechanisms, and given the limited time remaining in the sablefish primary fishery season, an emergency action to extend the season is the only mechanism sufficient to provide participants access to their quota. NMFS is issuing this emergency rule in compliance with these guidelines to prevent significant direct economic loss and preserve economic opportunities that otherwise might be foregone.

This emergency action will help the fishery achieve, but not exceed, the allocation of sablefish to the sablefish primary fishery, and the sablefish annual catch limit. NMFS evaluated the anticipated effects of this emergency action and determined that the effects fall within those described in the Environmental Assessment for the 2021-2022 Groundfish Harvest Specifications and Management Measures; which is tiered from the Harvest Specifications and Management Measures for 2015-2016 and Biennial Periods Thereafter Final Environmental Impact Statement (EIS) which discloses the longer-term framework and environmental impacts of the biennial specifications process. NMFS documented this decision-making process in a Supplemental Information Report (see ADDRESSES).

Emergency Measures

Effective [*insert date of publication in the FEDERAL REGISTER*], this action temporarily extends the 2021 sablefish primary season for limited entry, sablefish-
endorsed vessels using bottom longline gear North of 36° N. lat., from October 31, 2021, to December 31, 2021. NMFS is only implementing the emergency season extension for vessels in this sector that use bottom longline gear as defined at 50 C.F.R. § 660.11.

The sablefish primary fishery includes vessels fishing with both longline and pot gear. West coast sablefish pot gear fisheries are considered Category II fisheries under the Marine Mammal Protection Act's (MMPA) List of Fisheries, indicating occasional interactions with marine mammals, due to occasional incidental mortality and serious injury to Endangered Species Act-listed humpback whales (the CA/OR/WA stock of humpback whales). All other West Coast groundfish fisheries, including trawl and longline fisheries, are considered Category III fisheries under the MMPA, indicating a remote likelihood of, or no known serious injuries or mortalities to, marine mammals.

Because pot gear fisheries are Category II fisheries, NMFS is required to issue a MMPA section 101(a)(5)(E) permit for the taking of marine mammals after making a negligible impact determination (NID). NMFS issued a permit for the sablefish pot gear fisheries on September 4, 2013 (amended April 23, 2015 (80 FR 22709)) which expired on September 4, 2016 (78 FR 54553). The Council recommended the emergency extension for the sablefish primary fishery, which would include vessels fishing with longline and/or pot gear. While NMFS believes an emergency exists for all vessels in the sablefish primary fishery season, due to lack of a section 101(a)(5)(E) permit for sablefish pot gear, NMFS is only implementing the emergency extension for the sablefish primary fishery for those vessels using longline gear in this action. Pot/trap gear cannot be used during the season extension under this emergency rule. NMFS published a notice of proposed issuance of a MMPA section 101(a)(5)(E) permit and proposed NID on

October 22, 2021 (86 FR 58641). If a new MMPA section 101(a)(5)(E) permit for sablefish pot gear is published before the end of 2021, NMFS may also extend the primary fishery season for vessels using pot gear in a subsequent rule.

This action includes some administrative changes to allow additional transfers of sablefish-endorsed limited entry permits so that these permits may be transferred more than once within a calendar year. Additionally, this emergency rule temporarily suspends the permit stacking limit in this fishery and the restriction on gear endorsements in this fishery. As such, sablefish-endorsed limited entry permits with a pot gear endorsement can be fished using bottom longline gear during this temporary extension of the season. These changes will allow fishery participants to appropriately take advantage of the extended season. This action also extends the incidental halibut retention allowance for the sablefish primary fishery North of Point Chehalis, Washington, to December 7, 2021, which is the latest date allowed by the International Pacific Halibut Commission. After December 7, any incidental halibut would need to be discarded as a prohibited species.

Classification

The NMFS Assistant Administrator has determined that this emergency rule is consistent with the PCGFMP, section 305(c) and other provisions of the Magnuson-Stevens Act, the Administrative Procedure Act (APA), and other applicable law. Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries finds good cause to waive prior notice and the opportunity for public comment because it would be impracticable and contrary to the public interest.

The Council made an emergency modification to their September 2021 meeting agenda to consider taking emergency action in response to requests from industry representatives, the GAP, and the public. These entities raised concerns that many vessels would be unable to harvest their allocations before the sablefish primary fishery season closed due to unforeseen issues resulting from restrictions associated with the COVID-19

pandemic. The Council considered and ultimately recommended NMFS initiate this action on September 14, with less than 7 weeks remaining before the closure of the sablefish primary season on October 31. Providing prior notice through proposed rulemaking and public comment period in the normal rulemaking process would be counter to public interest by delaying implementation of emergency measures intended to address a time-sensitive management problem. Further delays to extend the season through emergency action would jeopardize the ability of sablefish primary fishery participants to land allocations, and avoid economic hardship. For the reasons outlined above, NMFS finds it impracticable and contrary to the public interest to provide prior opportunity to comment on these emergency measures.

Additionally, this rule is exempt from the 30-day delayed effectiveness provision of the APA under 5 U.S.C. 553(d)(1) because it relieves a restriction that would place fishery participants at an economic disadvantage. Waiving the 30-day delayed effectiveness for this rule is necessary to allow participants in the sablefish primary fishery under emergency rules to continue fishing operations with minimal interruption beyond the status quo closure date of October 31. Not extending the sablefish primary fishery season past October 31 would present immediate serious economic impacts without contributing to the economic goals of the sablefish tier program. Because this rule alleviates a restriction, which if continued would otherwise have serious and unnecessary economic harm on tier fishery vessels, it is not subject to the 30-day delayed effectiveness provision of the APA.

This action is being taken pursuant to the emergency provision of Magnuson-Stevens Act and is exempt from OMB review. This final rule has been determined to be not significant for purposes of Executive Order 12866.

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

This action does not contain a collection-of-information requirements for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: October 26, 2021.

Samuel D. Rauch, III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C 7001 *et seq.*

2. In § 660.25, add paragraphs (b)(3)(ii)(A) and (B), (b)(3)(iv)(A)(3), (b)(4)(iii)(A) and (B), (b)(4)(v)(C)(1) and (2), (b)(4)(vi)(D)(1) and (2), and (b)(vii)(B)(1) and (2) to read as follows:

§ 660.25 Permits.

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(b) * * *

(3) * * *

(ii) * * *

(A) *Emergency rule extending sablefish primary season.* Effective [Insert date of publication in the *FEDERAL REGISTER*], until December 31, 2021, notwithstanding any other section of these regulations, vessels assigned to a limited entry “A”-endorsed permit with a pot (trap) endorsement can use longline gear during the primary sablefish season described at § 660.231.

(B) [Reserved].

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(iv) * * *

(A) * * *

(3) *Emergency rule extending sablefish primary season.* Effective [Insert date of publication in the *FEDERAL REGISTER*], until December 31, 2021, notwithstanding any other section of these regulations, permit stacking limits for limited entry permits with sablefish endorsements will be unlimited.

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(4) * * *

(iii) * * *

(A) *Emergency rule extending sablefish primary season.* Effective [Insert date of publication in the *FEDERAL REGISTER*], until December 31, 2021, notwithstanding any other section of these regulations, permit stacking limits for limited entry permits with sablefish endorsements will be unlimited.

(B) [Reserved]

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(v) * * *

(C) * * *

(1) *Emergency rule extending sablefish primary season.* Effective [Insert date of publication in the *FEDERAL REGISTER*], until December 31, 2021, notwithstanding any other section of these regulations, the primary sablefish season described at § 660.231 is April 1 through December 31 for vessels registered to a sablefish-endorsed limited entry permit using bottom longline gear, as defined at § 660.11.

(2) [Reserved]

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(vi) * * *

(D) * * *

(1) *Emergency rule extending sablefish primary season.* Effective [Insert date of publication in the *FEDERAL REGISTER*], until December 31, 2021, notwithstanding any other section of these regulations, the primary sablefish season described at § 660.231 is April 1 through December 31 for vessels registered to a sablefish-endorsed limited entry permit using bottom longline gear, as defined at § 660.11.

(2) *Temporary changes in vessel registration.* Effective [Insert date of publication in the *FEDERAL REGISTER*], until December 31, 2021, a change in vessel registration that causes the new vessel to exceed the permit stacking limits will expire at 11:59pm on December 31, 2021. At 11:59pm on December 31, 2021, NMFS will return any sablefish-endorsed limited entry permit exceeding the permit stacking limit to the original vessel.

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(vii) * * *

(B) * * *

(1) *Emergency rule extending sablefish primary season.* Effective [Insert date of publication in the *FEDERAL REGISTER*], until December 31, 2021, notwithstanding any other section of these regulations, Sablefish-endorsed limited entry fixed gear permits

(without MS/CV or C/P endorsements) may be registered for use with a different vessel up to five times per calendar year.

(2) [Reserved]

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3. In § 660.213, add paragraphs (d)(2)(i) and (ii) to read as follows:

§ 660.213 Fixed gear fishery—recordkeeping and reporting.

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(d) * * *

(2) * * *

(i) *Emergency rule extending sablefish primary season.* Effective [Insert date of publication in the *FEDERAL REGISTER*], until December 31, 2021, notwithstanding any other section of these regulations, the primary sablefish season described at § 660.231 is April 1 through December 31 for vessels registered to a sablefish-endorsed limited entry permit using bottom longline gear, as defined at § 660.11.

(ii) [Reserved]

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4. In § 660.231, add paragraphs (b)(1)(i) and (ii), (b)(2)(i) and (ii), (b)(3)(i)(A) and (B), and (b)(3)(iv)(A) and (B) to read as follows:

§ 660.231 Limited entry fixed gear sablefish primary fishery.

* * * * *

(b) * * *

(1) * * *

(i) *Emergency rule extending sablefish primary season.* Effective [Insert date of publication in the *FEDERAL REGISTER*], until December 31, 2021, notwithstanding any other section of these regulations, North of 36° N. lat., the sablefish primary season for the limited entry, fixed gear, sablefish-endorsed vessels using bottom longline gear, as

defined at § 660.11, closes at 12 noon local time on December 31, or closes for an individual vessel owner when the tier limit for the sablefish endorsed permit(s) registered to the vessel has been reached, whichever is earlier, unless otherwise announced by the Regional Administrator through the routine management measures process described at § 660.60(c).

(ii) [Reserved]

(2) * * *

(i) *Emergency rule extending sablefish primary season.* Effective [*Insert date of publication in the FEDERAL REGISTER*], until December 31, 2021, notwithstanding any other section of these regulations, all vessels authorized to fish in that season under paragraph (a) of this section, when fishing against primary season cumulative limits, may fish for sablefish with bottom longline gear, as defined at § 660.11, whether or not they are registered to a limited entry sablefish-endorsed permit with a longline endorsement.

(ii) [Reserved]

(3) * * *

(i) * * *

(A) *Emergency rule extending sablefish primary season.* Under emergency measures effective [*insert date of publication in the FEDERAL REGISTER*], until December 31, 2021, notwithstanding any other section of these regulations, an unlimited number of permits may be registered for use with a single vessel during the primary season.

(B) [Reserved]

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(iv) * * *

(A) *Emergency rule extending sablefish primary season.* Under emergency measures effective [*insert date of publication in the FEDERAL REGISTER*], until

December 7, 2021, notwithstanding any other section of these regulations, vessels authorized to participate in the sablefish primary fishery, licensed by the International Pacific Halibut Commission for commercial fishing in Area 2A (waters off Washington, Oregon, California), and fishing with longline gear north of Pt. Chehalis, WA (46°53.30' N. lat.) may possess and land up to 225 pounds (113 kg) dressed weight of Pacific halibut for every 1,000 pounds (454 kg) dressed weight of sablefish landed and up to two additional Pacific halibut in excess of the 225-pounds-per-1,000-pound limit per landing. Pacific halibut taken and retained in the sablefish primary fishery north of Pt. Chehalis may only be landed north of Pt. Chehalis and may not be possessed or landed south of Pt. Chehalis.

(B) [Reserved]

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